

Senator Curtis S. Bramble proposes the following substitute bill:

**WORKERS' COMPENSATION FUND AND
WORKERS' COMPENSATION FOR THE STATE**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gordon E. Snow

Senate Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill amends the Insurance Code, the Utah Labor Code, and the Utah Administrative Services Code to address the Workers' Compensation Fund, the fund's assets, and workers' compensation coverage for the state.

Highlighted Provisions:

This bill:

- ▶ addresses the legal nature of the Workers' Compensation Fund and its assets;
- ▶ addresses the makeup of the Workers' Compensation Fund's board of directors;
- ▶ beginning July 1, 2007, deletes the requirement that state entities pay the Workers' Compensation Fund for workers' compensation coverage;
- ▶ beginning July 1, 2007, establishes requirements for the state to secure the payment of workers' compensation benefits for its employees;
- ▶ addresses the application to the state of certain statutes applicable to self-insured employers; and
- ▶ makes conforming amendments and technical changes.

Monies Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **31A-33-103**, as last amended by Chapter 222, Laws of Utah 200031 **31A-33-106**, as last amended by Chapters 176 and 186, Laws of Utah 200232 **34A-2-202**, as last amended by Chapter 289, Laws of Utah 200533 **34A-2-203**, as last amended by Chapter 222, Laws of Utah 200034 **63A-4-101**, as last amended by Chapter 135, Laws of Utah 199736 *Be it enacted by the Legislature of the state of Utah:*37 Section 1. Section **31A-33-103** is amended to read:38 **31A-33-103. Legal nature of Workers' Compensation Fund.**

39 (1) The Workers' Compensation Fund is:

40 (a) a nonprofit, self-supporting, quasi-public corporation; ~~and~~41 (b) subject to statutes governing the Workers' Compensation Fund that may be enacted
42 or modified by the Legislature including:43 (i) modifying the structure and management of the Workers' Compensation Fund;44 (ii) adjusting the level of the state's influence on the Workers' Compensation Fund; and45 (iii) modifying the state's involvement in administering workers' compensation
46 insurance; and47 ~~[(b)]~~ (c) a legal entity, that may sue and be sued in its own name.48 (2) All of the business and affairs of the corporation shall be conducted in the name of
49 the Workers' Compensation Fund or if conducted through a subsidiary, such other corporate
50 names that comply with state law.51 (3) The Workers' Compensation Fund assets, including the Injury Fund:52 (a) are not owned by the state, other than as a policyholder; and53 (b) belong to the Workers' Compensation Fund policyholders.54 (4) State law does not permit the dissolution of the Workers' Compensation Fund.55 Section 2. Section **31A-33-106** is amended to read:56 **31A-33-106. Board of directors -- Status of the fund in relationship to the state.**

(1) There is created a board of directors of the Workers' Compensation Fund.

(2) The board shall consist of seven directors.

(3) ~~One~~ Subject to Subsection (8), one director:

(a) (i) shall be the executive director of the Department of Administrative Services or the executive director's designee; and

~~(b)~~ (ii) acts as the representative of the state as a policyholder of the Workers' Compensation Fund~~[-]; or~~

(b) is a public director appointed in accordance with Subsection (8)(b).

(4) One director shall be the chief executive officer of the fund.

(5) (a) In accordance with a plan that meets the requirements of this section, the governor, with the consent of the Senate, shall appoint five public directors as follows:

(i) three directors who are owners, officers, or employees of policyholders other than the state, each of whom is an owner, officer, or employee of a policyholder that has been insured by the Workers' Compensation Fund for at least one year before the appointment of the director representing the policyholder; and

(ii) two directors from the public in general.

(b) The plan described in Subsection (5)(a) shall comply with Section 31A-5-409 to the extent that Section 31A-5-409 does not conflict with this section.

(6) No two directors may represent or be employed by the same policyholder.

(7) At least four directors appointed by the governor shall have had previous experience in:

(a) the actuarial profession;

(b) accounting;

(c) investments;

(d) risk management;

(e) occupational safety;

(f) casualty insurance; or

(g) the legal profession.

(8) (a) Any director who represents a policyholder that fails to maintain workers' compensation insurance through the Workers' Compensation Fund shall immediately resign from the board, including the executive director of the Department of Administrative Services

88 or the executive director's designee if no state entity is insured by the Workers' Compensation
89 Fund pursuant to Section 34A-2-203.

90 (b) (i) If no state entity is insured by the Workers' Compensation Fund pursuant to
91 Section 34A-2-203, the governor with the consent of the Senate, shall appoint a public director
92 to replace the executive director of the Department of Administrative Services or the executive
93 director's designee.

94 (ii) The public director appointed under this Subsection (8)(b) shall:

95 (A) be an owner, officer, or employee of a policyholder that has been insured by the
96 Workers' Compensation Fund for at least one year before the appointment of the director
97 representing the policyholder;

98 (B) have previous experience described in Subsection (7); or

99 (C) be the director of the Governor's Office of Economic Development.

100 (c) Once the executive director of the Department of Administrative Services or the
101 executive director's designee is not a member of the board under Subsection (3), the state shall
102 have a member on the board to represent the state as a policyholder only if the member is
103 appointed in accordance with Subsection (5) or (8)(b).

104 (9) A person may not be a director if that person:

105 (a) has any interest as a stockholder, employee, attorney, or contractor of a competing
106 insurance carrier providing workers' compensation insurance in Utah;

107 (b) fails to meet or comply with the conflict of interest policies established by the
108 board; or

109 (c) is not bondable.

110 (10) After notice and a hearing, the governor may remove any director for cause which
111 includes:

112 (a) neglect of duty; or

113 (b) malfeasance.

114 (11) (a) Except as required by Subsection (11)(b), the term of office of the directors
115 appointed by the governor shall be four years, beginning July 1 of the year of appointment.

116 (b) Notwithstanding the requirements of Subsection (11)(a), the governor shall, at the
117 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
118 directors are staggered so that approximately half of the board is appointed every two years.

(12) Each director shall hold office until the director's successor is appointed and qualified.

(13) When a vacancy occurs in the membership of the board for any reason, the replacement shall be appointed for the unexpired term.

(14) The board shall annually elect a chair and other officers as needed from its membership.

(15) (a) The board shall meet at least quarterly at a time and place designated by the chair.

(b) The chair:

(i) may call board meetings more frequently than quarterly; and

(ii) shall call additional board meetings if requested to do so by a majority of the board.

(16) Four directors are a quorum for the purpose of transacting all business of the board.

(17) Each decision of the board requires the affirmative vote of at least four directors for approval.

(18) (a) Directors shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the director's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Directors may decline to receive per diem and expenses for their service.

(c) The fund shall pay the per diem allowance and expenses from the Injury Fund upon vouchers drawn in the same manner as the Workers' Compensation Fund pays its normal operating expenses.

(d) ~~[The executive director of the Department of Administrative Services, or the executive director's designee, and the chief executive officer of the Workers' Compensation Fund]~~ The following shall serve on the board without a per diem allowance[-]:

(i) the executive director of the Department of Administrative Services, or the executive director's designee;

(ii) the chief executive officer of the Workers' Compensation Fund; and

(iii) the director of the Governor's Office of Economic Development if appointed under Subsection (8).

(19) The requirement that the governor, with the consent of the Senate, appoint the

directors of the Workers' Compensation Fund specified in Subsection (5) or (8), does not:

(a) remove from the board of directors the managerial, financial, or operational control of the Workers' Compensation Fund;

(b) give to the state or the governor managerial, financial, or operational control of the Workers' Compensation Fund;

(c) consistent with Section 31A-33-105, cause the state to be liable for any:

(i) obligation of the Workers' Compensation Fund; or

(ii) expense, liability, or debt described in Section 31A-33-105;

(d) alter the legal status of the Workers' Compensation Fund as:

(i) a nonprofit, self-supporting, quasi-public corporation; and

(ii) an insurer:

(A) regulated under this title;

(B) that is structured to operate in perpetuity; and

(C) domiciled in the state; or

(e) alter the requirement that the Workers' Compensation Fund provide workers' compensation:

(i) for the purposes set forth in Section 31A-33-102;

(ii) consistent with Section 34A-2-201; and

(iii) as provided in Section 31A-22-1001.

Section 3. Section **34A-2-202** is amended to read:

34A-2-202. Assessment on self-insured employers including the state, counties, cities, towns, or school districts paying compensation direct.

(1) (a) (i) A self-insured employer, including a county, city, town, or school district, ~~[who by authority of the division under Sections 34A-2-201 and 34A-2-201.5 is authorized to pay compensation direct]~~ shall pay annually, on or before March 31, an assessment in accordance with this section and rules made by the commission under this section.

(ii) For purposes of this section, "self-insured employer" is as defined in Section 34A-2-201.5, except it includes the state if the state self-insures under Section 34A-2-203.

(b) The assessment required by Subsection (1)(a) is:

(i) to be collected by the State Tax Commission;

(ii) paid by the State Tax Commission into the state treasury as provided in Subsection

181 59-9-101(2); and

182 (iii) subject to the offset provided in Section 34A-2-202.5.

183 (c) The assessment under Subsection (1)(a) shall be based on a total calculated
184 premium multiplied by the premium assessment rate established pursuant to Subsection
185 59-9-101(2).

186 (d) The total calculated premium, for purposes of calculating the assessment under
187 Subsection (1)(a), shall be calculated by:

188 (i) multiplying the total of the standard premium for each class code calculated in
189 Subsection (1)(e) by the self-insured employer's experience modification factor; and

190 (ii) multiplying the total under Subsection (1)(d)(i) by a safety factor determined under
191 Subsection (1)(g).

192 (e) A standard premium shall be calculated by:

193 (i) multiplying the prospective loss cost for the year being considered, as filed with the
194 insurance department pursuant to Section 31A-19a-406, for each applicable class code by 1.10
195 to determine the manual rate for each class code; and

196 (ii) multiplying the manual rate for each class code under Subsection (1)(e)(i) by each
197 \$100 of the self-insured employer's covered payroll for each class code.

198 (f) (i) Each self-insured employer paying compensation direct shall annually obtain the
199 experience modification factor required in Subsection (1)(d)(i) by using:

200 (A) the rate service organization designated by the insurance commissioner in Section
201 31A-19a-404; or

202 (B) for a self-insured employer that is a public agency insurance mutual, an actuary
203 approved by the commission.

204 (ii) If a self-insured employer's experience modification factor under Subsection
205 (1)(f)(i) is less than 0.50, the self-insured employer shall use an experience modification factor
206 of 0.50 in determining the total calculated premium.

207 (g) To provide incentive for improved safety, the safety factor required in Subsection
208 (1)(d)(ii) shall be determined based on the self-insured employer's experience modification
209 factor as follows:

210 EXPERIENCE

211 MODIFICATION FACTOR

SAFETY FACTOR

212	Less than or equal to 0.90	0.56
213	Greater than 0.90 but less than or equal to 1.00	0.78
214	Greater than 1.00 but less than or equal to 1.10	1.00
215	Greater than 1.10 but less than or equal to 1.20	1.22
216	Greater than 1.20	1.44

217 (h) (i) A premium or premium assessment modification other than a premium or
218 premium assessment modification under this section may not be allowed.

219 (ii) If a self-insured employer paying compensation direct fails to obtain an experience
220 modification factor as required in Subsection (1)(f)(i) within the reasonable time period
221 established by rule by the State Tax Commission, the State Tax Commission shall use an
222 experience modification factor of 2.00 and a safety factor of 2.00 to calculate the total
223 calculated premium for purposes of determining the assessment.

224 (iii) Prior to calculating the total calculated premium under Subsection (1)(h)(ii), the
225 State Tax Commission shall provide the self-insured employer with written notice that failure
226 to obtain an experience modification factor within a reasonable time period, as established by
227 rule by the State Tax Commission:

228 (A) shall result in the State Tax Commission using an experience modification factor
229 of 2.00 and a safety factor of 2.00 in calculating the total calculated premium for purposes of
230 determining the assessment; and

231 (B) may result in the division revoking the self-insured employer's right to pay
232 compensation direct.

233 (i) The division may immediately revoke a self-insured employer's certificate issued
234 under Sections 34A-2-201 and 34A-2-201.5 that permits the self-insured employer to pay
235 compensation direct if the State Tax Commission assigns an experience modification factor
236 and a safety factor under Subsection (1)(h) because the self-insured employer failed to obtain
237 an experience modification factor.

238 (2) Notwithstanding the annual payment requirement in Subsection (1)(a), a
239 self-insured employer whose total assessment obligation under Subsection (1)(a) for the
240 preceding year was \$10,000 or more shall pay the assessment in quarterly installments in the
241 same manner provided in Section 59-9-104 and subject to the same penalty provided in Section
242 59-9-104 for not paying or underpaying an installment.

(3) (a) The State Tax Commission shall have access to all the records of the division for the purpose of auditing and collecting any amounts described in this section.

(b) Time periods for the State Tax Commission to allow a refund or make an assessment shall be determined in accordance with Section 59-9-106.

(4) (a) A review of appropriate use of job class assignment and calculation methodology may be conducted as directed by the division at any reasonable time as a condition of the self-insured employer's certification of paying compensation direct.

(b) The State Tax Commission shall make any records necessary for the review available to the commission.

(c) The commission shall make the results of any review available to the State Tax Commission.

Section 4. Section **34A-2-203** is amended to read:

34A-2-203. Payment of premiums by state department, commission, board, or other agency.

[Each] (1) Until June 30, 2007, a department, commission, board, or other agency of the state shall pay the insurance premium on its employees direct to the Workers' Compensation Fund.

(2) Beginning July 1, 2007, the state shall secure the payment of workers' compensation benefits for its employees:

(a) by:

(i) insuring, and keeping insured, the payment of this compensation with the Workers' Compensation Fund;

(ii) insuring, and keeping insured, the payment of this compensation with any stock corporation or mutual association authorized to transact the business of workers' compensation insurance in this state; or

(iii) paying direct compensation as a self-insured employer in the amount, in the manner, and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act;

(b) in accordance with Title 63A, Chapter 4, Risk Management; and

(c) subject to Subsection (3).

(3) (a) If the state determines to secure the payment of workers' compensation benefits

for its employees by paying direct compensation as a self-insured employer in the amount, in the manner, and due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act, the state is:

(i) exempt from Section 34A-2-202.5 and Subsection 34A-2-704(14); and

(ii) required to pay a premium assessment as provided in Section 34A-2-202.

(b) If the state chooses to pay workers' compensation benefits for its employees through insuring under Subsection (2)(a)(i) or (ii), the state shall obtain that insurance in accordance with Title 63, Chapter 56, Utah Procurement Code.

Section 5. Section **63A-4-101** is amended to read:

63A-4-101. Risk manager -- Appointment -- Duties.

(1) The executive director shall appoint a risk manager, who shall be qualified by education and experience in the management of general property and casualty insurance.

(2) The risk manager shall:

(a) acquire and administer the following purchased by the state:

(i) all property, casualty insurance[-]; and

(ii) subject to Section 34A-2-203, workers' compensation insurance [~~purchased by the state~~];

(b) recommend that the executive director make rules:

(i) prescribing reasonable and objective underwriting and risk control standards for state agencies;

(ii) prescribing the risks to be covered by the Risk Management Fund and the extent to which these risks will be covered;

(iii) prescribing the properties, risks, deductibles, and amount limits eligible for payment out of the fund;

(iv) prescribing procedures for making claims and proof of loss; and

(v) establishing procedures for the resolution of disputes relating to coverage or claims, which may include binding arbitration;

(c) implement a risk management and loss prevention program for state agencies for the purpose of reducing risks, accidents, and losses to assist state officers and employees in fulfilling their responsibilities for risk control and safety;

(d) coordinate and cooperate with any state agency having responsibility to manage and

305 protect state properties, including:

306 (i) the state fire marshal[;];

307 (ii) the director of the Division of Facilities Construction and Management[;];

308 (iii) the Department of Public Safety[;]; and

309 (iv) institutions of higher education;

310 (e) maintain records necessary to fulfill the requirements of this section;

311 (f) manage the fund in accordance with economically and actuarially sound principles

312 to produce adequate reserves for the payment of contingencies, including unpaid and

313 unreported claims, and may purchase any insurance or reinsurance considered necessary to

314 accomplish this objective; and

315 (g) inform the agency's governing body and the governor when any agency fails or

316 refuses to comply with reasonable risk control recommendations made by the risk manager.

317 (3) Before the effective date of any rule, the risk manager shall provide a copy of the

318 rule to each agency affected by it.